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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

MARY F.,

Petitioner,

v.

THE SUPERIOR COURT OF SOLANO
COUNTY,

Respondent;

SOLANO COUNTY HEALTH AND
SOCIAL SERVICES,

Real Party in Interest.

A135556

(Solano County
Super. Ct. Nos. J40976, J40977)

Petitioner Mary F. is the mother of William D. and James D. She petitions for writ review of a juvenile court order terminating reunification services and setting a permanent plan selection and implementation hearing pursuant to Welfare and Institutions Code¹ section 366.26. (Cal. Rules of Court, rule 8.452.) Petitioner claims that this order was not supported by substantial evidence and constituted an abuse of discretion in light of the “sybiosis of medical issues” that she faced during the review period which impacted her level of participation in the case plan.

We conclude that the court’s orders are supported by substantial evidence and it did not abuse its discretion in setting the section 366.26 hearing. Accordingly, we deny the petition for writ review.

¹ All statutory references are to the Welfare and Institutions Code.

I. BACKGROUND

A. Jurisdiction and Disposition

On September 19, 2011, the juvenile court sustained a juvenile dependency petition as amended as to William D. (born Sept. 2008) and James D. (born July 2010). The court found true allegations under section 300, subdivisions (b) (failure to protect) and (j) (abuse of sibling). Specifically, the court found that the alleged father, Joseph D., and petitioner were arrested for child endangerment after leaving the minors at a church nursery and disappearing for two hours, and were unable to provide ongoing care and supervision due to the subsequent incarceration. At that time James D. had an infected bug bite and rash on his leg that required immediate hospitalization, and the parents knew or reasonably should have known that his condition required medical attention and that delay in seeking it placed him at a substantial risk of physical harm. This state of affairs placed *both* minors at a substantial risk of serious physical harm.

The jurisdiction report of respondent Solano County Health and Social Services (Department) noted that the parents had a prior substantiated referral for general neglect based on an unsafe housing situation. The father reported two prior criminal matters—a dismissed assault, and a driving under the influence of alcohol case. At the time of the parents’ arrest for child endangerment, they were living out of their vehicle on church property and attempting to look for a place to stay. The vehicle was filthy; there was an open bottle of wine next to the car seat. They had dropped off their children in the church day care but failed to return in a timely manner. An attendant tried to change James’s diaper, which was dirty, noting a swollen red abscess on his thigh. When mother returned, her speech was rapid and loud.

The disposition report indicated that petitioner reported a diagnosis of posttraumatic stress disorder and depression for which she has received individual therapy and medication management. The parents admitted that the current housing situation was inappropriate for children, and were working with Ms. Nicodemus of youth and family services to obtain housing. They were also enrolled in a parenting class. Petitioner’s hair strand test was positive for amphetamine and methamphetamine.

No medical or emotional health concerns were noted for either boy, although a referral was made for speech evaluation due to William's slurred speech. James was walking and speaking; his infected bug bite had fully healed. The Department was in the process of referring petitioner for a substance abuse assessment to obtain recommendations for treatment. The reporting social worker recommended reunification services for petitioner with discretion to the Department to return the minors to her under a family maintenance plan. As to Joseph D., they recommended no services unless he was determined to be the presumed father.

Petitioner and Joseph D. submitted on the recommendations. The court found Joseph D. to be the presumed father.

B. Six-month Status Review Report

In its status review report filed March 12, 2012, the Department recommended that the juvenile court maintain the minors in out-of-home placement; terminate reunification services; and set a section 366.26 hearing for July 2012. Three-year-old William was diagnosed with a language delay. A meeting was scheduled to develop an individual education plan for him. James was observed babbling, waving "bye," and smiling and giggling with his foster parents. His walk appeared stiff; therefore, the social worker requested that the foster parents arrange to have James assessed for developmental concerns regarding his walking. The boys were bonded to their foster parents and appeared comfortable in their home, although the placement was not a long-term permanency option. The maternal grandmother and her husband requested consideration as a placement option. They live in New Jersey.

The parents were partially compliant with the parent education component of the case plan. They enrolled in parenting classes but stopped attending when they contracted MRSA.² Ms. Nicodemus reported that the women's reentry achievement program services for petitioner were terminated because she never completed the assessment to determine her strengths, needs and challenges. Additionally, there was a

² "MRSA" is the acronym for methicillin-resistant staphylococcus aureus.

lack of follow through and consistency. Lucia Morales, the reporting social worker, stated that she enrolled both parents in group parenting education classes; they were attending, and had missed just one session.

As well, the parents were partially compliant with their responsibility to participate in the minors' developmental assessments. William's speech pathology assessment was delayed because the parents failed to turn in the required paperwork on time.

The parents were not compliant with substance abuse testing. Both failed to appear for four scheduled tests after their hair tested positive for amphetamine/methamphetamine. Both disputed the results, ascribing them to prescribed medications. However, neither parent followed through with the medical review office as directed by Ms. Morales to ascertain if their prescribed medication would alter test results. The parents were also referred to a behavioral health assessment team (BHAT) due to lack of compliance with drug testing. Although Joseph D. initially reported that they scheduled an appointment, BHAT staff reported no appointment had been made. Ultimately Ms. Morales scheduled an appointment for them. Joseph D. mistakenly showed up in the morning for an afternoon appointment and did not return. Petitioner kept her appointment; BHAT instructed her to get a note from a doctor confirming that her medication was altering the drug testing result, but she did not follow through.

The parents were not compliant with the requirement that they maintain stable and suitable housing. Petitioner informed the social worker they were staying with different friends. The social worker was unable to obtain an address from them personally, but did obtain the information from another source. Petitioner also told the social worker that they had to move because of mold and ongoing construction, and the house was not "good for the kids," but then said it was a beautiful house and would not agree to a visit because "the people at the house" did not want the social worker there.

A housing resource staff person brought petitioner to an appointment at the Bridge to Life housing program. The visit did not go well. The staff person suspected petitioner was under the influence of some substance, and the intake worker asked petitioner to

drug test but she refused, due to her medication. The intake worker explained that she needed to be clean and sober to enter the program. An aide there overheard petitioner call the intake worker “[b]itch.”

The parents had weekly, three-hour supervised visits with their sons. They attended all visits in September 2011; were an hour late one week; cancelled two visits in October due to illness; did not visit in November due to being diagnosed with “STAPH/MRSA”; cancelled two visits in December; and cancelled a visit in January 2012 due to petitioner’s illness. Joseph D. showed up for the last visit but left early due to petitioner’s illness.

The visits that did occur were appropriate; the parents interacted well with the children. The social worker attended one scheduled visit that ended up being cancelled. She observed William kicking, crying and screaming “momma” when carried out of the visitation area.

The social worker recommended termination of services “based on their partial participation in case plan responsibilities. Throughout this reporting period, [petitioner and Joseph D.] have had sporadic visits with their children and have recently engaged in parenting classes, but they have not obtained stable and suitable housing and have not drug tested since 09/2011. . . . [¶] . . . [¶] . . . Throughout this reporting period, [petitioner and Joseph D.] have been reluctant to engage in family reunification services despite the numerous referrals and attempts the undersigned has made.” Further, they denied having a substance abuse problem and blamed their positive test on prescribed medication. Additionally, they would not provide the Department with a home address.

The social worker also had concerns about petitioner’s mental health, noting that she has “exhibited signs of anxiousness, rapid talk, and emotional outburst,” and surmised that the “behaviors may be due to possible substance abuse and/or mental health issues.” Concern was also expressed about the parents’ health, as they reported “being sick” at most meetings and claimed to have contracted “STAPH/MRSA” in jail. The social worker was unable to confirm the exact dates they were contagious.

C. Status Hearing

The contested six-month review hearing set for April 18, 2012, was continued at petitioner's request. At that time Joseph D. produced a letter from petitioner's physician stating she was being "followed" for medical problems. Out of an abundance of caution, the court continued the matter for verification that petitioner could not attend the hearing because of her medical condition. Two days later the court received a note from Dr. Chen, stating that petitioner "suffers from mental illness (depression/anxiety)" and a "MRSA" skin infection, "and therefore was unable to appear in court." Dr. Chen urged petitioner to seek mental health services and delineated the prognosis for mental illness as "fair." Dr. Chen explained that petitioner's MRSA skin infection had not completely resolved despite a regimen of multiple antibiotics, and she would refer her to an infectious disease specialist.

Thereafter, the Department submitted a confidential pleading addendum with an appended letter to the court from Dr. Chen. Dr. Chen stated she had only seen petitioner twice and did not test her for MRSA. Based on *petitioner's* report of multiple emergency room visits for MRSA infection as well as her presenting mild conjunctivitis and mild boils on the skin, Dr. Chen referred petitioner to an infectious disease specialist "for assistance to help treat as well as educate patient about MRSA infections." Dr. Chen stated that it was very unlikely that petitioner's infection was life threatening despite petitioner's perception to the contrary. Further, Dr. Chen had not advised petitioner to be quarantined and did not tell her to avoid contact with the minors, mental health services or parenting classes. Indeed, at each visit she urged petitioner to seek a mental health evaluation and treatment, which was crucial to her overall health.

Neither parent appeared at the rescheduled hearing, and counsel for both asked for a continuance because their clients were ill. Petitioner told her attorney that her MRSA condition had worsened, she had an appointment to see an infectious disease specialist, and her eyes were badly infected. The court denied the requests, stating that the motions to continue were untimely, not supported in writing, and the court had no basis upon which to accept the parents' representations.

Dr. Stacey, the chief medical officer for Solano County, testified as an expert in family medicine. He explained that MRSA can be acquired in the community and also contracted in a hospital. In a hospital setting, the condition can be resistant to many antibiotics. Community-acquired MRSA infections are very common; they are usually skin lesions that can be treated on an outpatient basis.

MRSA is spread by skin-to-skin contact. Persons infected with community-acquired MRSA do not need to be quarantined, but should adequately cover any abscess and wash their hands.

Dr. Stacey testified that there was no confirmation in petitioner's medical records that she had even been infected with MRSA. Petitioner was treated in a clinic in late October for an abscess and went to the emergency room on November 14 where she received one dose of intravenous antibiotics. She received an oral course of antibiotics as an outpatient. By December the infection had resolved. There was no instruction in the medical file to remain isolated.

Dr. Stacey indicated that MRSA contracted in a county jail would be considered community-acquired MRSA. Community-based forms of MRSA could require hospitalization. MRSA in the bloodstream or spinal fluid would be a very serious infection requiring hospitalization. People with lower functioning immune systems are at higher risk to many other infections. An abscess, left untreated, could become a systemic infection.

According to Dr. Stacey, MRSA was an acute infection, not a chronic illness. Dr. Chen's description of the papules on petitioner's skin was a nonspecific finding. Dr. Chen did not exclude the possibility that petitioner suffered from MRSA, and did refer her to a specialist.

Dr. Stacey testified that conjunctivitis was most commonly caused by a virus or allergies, but could be caused by bacteria. There was nothing in Dr. Chen's records that suggested petitioner had MRSA.

Social worker Lucy Fuentes also testified and updated information in the six-month status report. Since then, the parents had started a parenting course, and attended

four out of seven sessions, blaming MRSA for their failure to complete the course. The parents informed Ms. Fuentes that they were going to participate in an online parenting class, but had not sent her information about the course or confirmation of completion.

Neither parent attended William's individual education plan meeting because they were sick. They failed to show for drug tests on February 23 and March 29.

Joseph D. finally provided Ms. Fuentes with a home address on March 12, 2012. When she arrived on March 28, 2012, for an unannounced visit, they claimed they were contagious and denied her access. Ms. Fuentes heard other voices inside. Petitioner said they were friends helping paint the house, who were "okay" with the MRSA. In order to confirm that the parents satisfied the housing element of their case plan, Ms. Fuentes would have to complete a home visit and assessment.

The parents visited their sons on January 20 and 27, and February 3, 10 and 17. They missed a late February visit because Joseph D. said he was sick; there were no visits in March; and mother made no visits in April, again missing one visit because of illness.

Ms. Fuentes described petitioner as "very emotional" at a recent meeting. She could not calm down and walked out. Joseph D. told Ms. Fuentes that "court will just make her go nuts."

The court concluded by a preponderance of the evidence that the return of the children to their parents created a substantial risk of detriment to their safety, protection and physical well-being. The court found that the parents did not substantially comply with the case plan, and in fact actively undermined it with claims that they have medical conditions that preclude them from doing anything. Additionally, the Department provided reasonable services to them to aid them in overcoming the problems that led to the minors' removal. By clear and convincing evidence the court found that both parents failed to participate regularly in and make substantial progress in their court-ordered treatment plan, terminated reunification services and set a section 366.26 hearing. This petition followed.

II. DISCUSSION

Petitioner maintains that the above orders were not supported by substantial evidence, or constituted an abuse of discretion. The substantial evidence standard of review applies to challenges to findings concerning whether a parent complied with and regularly participated in a court-ordered case plan, and whether the return of a minor to a parent's custody would be detrimental. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763; see *Robert L. v. Superior Court* (1996) 45 Cal.App.4th 619, 625-626.)

Section 366.21, subdivision (e) governs the six-month status review hearing, providing that the court shall return a minor to the physical custody of his or her parent or guardian “unless the court finds, by a preponderance of the evidence, that the return of the child . . . would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. . . . The failure of the parent . . . to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental.” The statute further provides that where, as here, the child was under three years of age upon initial removal, “and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child . . . may be returned to his or her parent . . . within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.” (§ 366.21, subd. (e).)

Under the statute, the court must consider not only the completion or lack of completion with the technical requirements of the reunification plan, but also the progress the parent has made toward eliminating the conditions that led to the minor's removal. (*In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1139, 1141-1142.) Here, petitioner partially complied with the visitation and parenting class requirements, missing visits and classes due to her perceived illness notwithstanding that her doctor never quarantined petitioner or otherwise forbade her from having contact with her children or participating

in services. She failed to submit to drug tests or to follow through with a substance abuse evaluation, claiming prescribed medications yielded positive test results, yet did not follow through with the very procedures that were designed to clarify such situations. Petitioner reported a history of mental health issues, and her doctor urged her on more than one occasion to seek mental health treatment, yet there is no indication that she did so. Petitioner was lax in dealing with the paperwork for William's therapy, and did not attend his individual education plan meeting due, again, to illness.

Petitioner does not argue that she made substantive progress in her treatment plan. Instead she states that at the time of the six-month review, she had obtained two-bedroom housing; the minors appeared attached to her and referred to her as "momma"; and she participated in "certain" parenting classes. She concludes that because the "sybiosis of medical issues during the review period" impacted her level of participation in services, it was erroneous to set the section 366.26 hearing.

The above assertion of housing merits clarification. On cross-examination of Ms. Fuentes, petitioner's attorney established that petitioner reported to the Department that she had a two-bedroom, two-bath residence. However, Ms. Fuentes made it clear that the Department would have to be able to conduct a home visit and assessment to determine if the housing were livable and safe. It was petitioner who thwarted the Department's effort to verify housing conditions, a pattern consistent with evading services or remedies to document or assess substance abuse or mental health issues. She also missed many crucial visits with her children, both under three years of age, when there was no medical reason to avoid the contact. She did not attend the critical contested status review hearing, after having it put over for her benefit. In short, there is substantial evidence supporting the juvenile court's finding by clear and convincing evidence that petitioner failed to participate regularly and make substantive progress in her court-ordered treatment plan. (§ 366.21, subd. (e).) Accordingly, the court did not abuse its discretion in setting the section 366.26 hearing.

III. DISPOSITION

We affirm the order terminating reunification services and setting a section 366.26 permanency plan hearing. We deny the petition for extraordinary writ review on the merits. Our decision is final immediately. (Cal. Rules of Court, rules 8.452(i), 8.490(b)(3).)

Reardon, J.

We concur:

Ruvolo, P.J.

Rivera, J.